NOORZILAN MOHAMED NOOR & ANOR

v.

KHAIRUL AZMAN KAMALUDDIN & ORS & ANOR CASE

HIGH COURT MALAYA, KUALA LUMPUR
ABDUL MALIK ISHAK J
[CIVIL SUITS NO: S-22-1356-2002; S22-1359-2002]
23 DECEMBER 2002

CONTRACT: *Partnership agreement - Expulsion of partner - Circumstances where court would interfere - Legal firm - Attempt to expel two partners - Injunction - Application to maintain status quo pending formal dissolution of partnership - Whether to be allowed - Partnership Act 1961 ss. 30, 37(f) - Specific Relief Act 1950 ss. 51, 52*

The parties in these two applications were partners in a legal firm known as Khairul Azman, Noorzilan, Nooron and Partners ('the Firm'). Following misunderstandings that arose between the partners, purportedly over the Firm's de-listing from the panelship of Maybank, notices of expulsion were issued to two partners ('Noorzilan and Nor Zihan') effectively barring them from entering the business offices of the Firm. In consequence, Noorzilan and Nor Zihan filed civil suit no. S-22-1356-02 ('Suit 1356') praying *inter alia* for an order that the *status quo* be maintained pending a formal dissolution of the partnership or any further order of the court. Thereupon, the other five partners, excluding Nor Zihan, filed civil suit no. S-22-1359-02 ('Suit 1359') and applied for an injunction to restrain Noorzilan from entering the offices of the Firm. It was not in dispute that following the Firm's de-listing aforesaid, the Firm had appealed to Maybank for re-enlistment, and that being so, before the learned judge herein, questions arose as to: (1) whether Noorzilan and Nor Zihan ought to be allowed to exercise their rights as partners pending hearing of their writ; and (ii) whether the injunction applied for by the partners in Suit 1359, namely *vide* encl (4) herein, was somehow misconceived and ought to be dismissed.

Held (allowing Suit 1356 and dismissing Suit 1359):

[1] The injunction sought for by Noorzilan and Nor Zihan ought to be granted. It must be emphasized that the court will interfere at the instance of a partner and will by injunction restrain the other partners from making any change in the nature of the business and in transacting any such business in the Firm's name. It must also be remembered that the Firm is a legal firm with a huge clientele and that there was no allegation that both the

plaintiffs had come to court with unclean hands. As the court sees it, both came to court to seek injunction and came with clean hands. (pp 432 h & 434 e)

[2] In relation to decisions taken at the insistence of a majority against the opposition of the remaining partners or where the question of a partner's expulsion or compulsory retirement arises, s. 30 of the Partnership Act 1961 would certainly come into play. Consequently, every partner has a right to know what is being carried on in his Firm's name and for which he is ultimately answerable. Also, a partner must not be prohibited from gaining access to information upon reasonable request. (p 437 e-g)

[3] The first plaintiff in Suit 1356 is a senior partner who is in active legal practice and having the management and control of the principal place of business at Bangunan Angkasaraya, whilst the second plaintiff is the one that manages the Shah Alam branch of the Firm. Clearly, both had standing and goodwill with their clientele. Their credibility and integrity would therefore suffer tremendously if they were to be excluded from the running of the Firm, for which damages would certainly not be an adequate remedy. Consequently, their prayers ought to be allowed. (pp 440 g-i & 441 a-b)

[4] To grant the injunction sought by the plaintiffs in Suit 1359 would stifle the attempts at lifting the suspension imposed by Maybank. That would certainly be a bad move. It must be remembered that the Firm does also carry the name of Noorzilan, that he is a senior partner thereof and that it was he who wrote the letter of appeal to Maybank. Further, to grant the injunction would preclude Noorzilan of the opportunity of having his rights determined at a full trial, whereas justice requires that he should be entitled to challenge and dispute the plaintiffs' claims at a trial. (p 444 c-e)

[5] The writ and statement of claim in Suit 1359 as seen in encl. (1) does not have a prayer for any other relief other than for an injunction. Clearly, by looking at encl. (1), there is no known cause of action known to law and in law. The right to an interlocutory relief is, by itself, not a known cause of action. (p 444 f)

Obiter:

[1] All clauses in partnership agreements conferring the powers to expel must be construed strictly. This is in order to prevent abuse and obviate the hardship of expulsion. Consequently, the court will be reluctant to expel a partner if it can be shown that the co-partners, although justified to expel under the expulsion clause, have taken advantage of the circumstances for their own purposes. (p 445 c-d)

Case(s) referred to:
Arif v. Yeo & Anor [1990] 1 MLJ 218 ***(foll)***
Blisset v. Daniel [1853] 10 Hare 493 ***(refd)***
Cayne & Another v. Global Natural Resources plc [1984] 1 All ER 225 ***(refd)***
Clements v. Norris [1878] 8 Ch D 120 ***(refd)***
Ganad Media Sdn Bhd v. Dato' Bandar Kuala Lumpur (No 2) [2002] 6 CLJ 6 HC ***(refd)***
Ganpat v. Annaji [1898] ILR 23 Bom 144 ***(refd)***
Gibb & Co v. Malaysia Building Society Bhd [1982] 1 CLJ 185; [1982] CLJ (Rep) 99 ***(refd)***
Green v. Howell [1910] 1 Ch 495 CA ***(refd)***
Hall v. Hall [1850] 12 Beav 414 ***(refd)***
Handyside v. Campbell [1901] 17 TLR 623 ***(refd)***
Jennings v. Baddeley [1853] 3 K & J 78 ***(refd)***
Keet Gerald Francis Noel John v. Mohd Noor & Ors [1995] 1 CLJ 293 CA ***(refd)***
Re A Solicitors' Arbitration [1962] 1 All ER 772 ***(refd)***
Re Yenidje Tobacco Co Ltd [1916] 2 Ch 426 ***(refd)***
Russell v. Russell [1880] 14 Ch D 471 ***(refd)***
Siskina v. Distos Compania Nasiera SA [1979] AC 210 ***(refd)***
Virudachala Nattan v. Ramasami Nayakan 1 Mad HCR 341 ***(refd)***

Legislation referred to:
Partnership Act 1961, ss. 30, 37(e), (f)

Law of Property Act 1925 [UK], s. 61(c)

Other source(s) referred to:
William Williamson Kerr and John Melvin Paterson, *A Treatise On The Law And Practice Of Injunctions*, 6th edn, pp. 513-515

For the plaintiffs - Ramdass Tikamdass (Ernest Azad); M/s Ernest Azad & Assocs
For the defendants - Fakhrul Azman (Mohd Affendy); M/s Azaine & Fakhrul

Reported by Rusnah Aziz/WA Sharif

JUDGMENT

Abdul Malik Ishak J:

Introduction

I heard these two cases simultaneously. One case carried civil suit no: S-22-1356-02; while the other case carried civil suit no: S-22-1359-02. Expediency was certainly the order of the day. Each party tries to outwit the other. Prolonged submissions were made by the parties thereto. No stones were left unturned. The submissions were made during the fasting month. It was rather taxing in the extreme.

Civil Suit No: S-22-1356-02

This was an application by way of a summons in chambers as seen in encl. 3 filed by both the plaintiffs, namely, Noorzilan Mohamed Noor and Nor Zihan Md Zain for the following orders:

a) that the defendants, whether by themselves, their servants or agents or otherwise howsoever be restrained from preventing the 1st Plaintiff from entering and carrying out his duties as a senior partner at his office at Suite A-C, 15th Floor, Bangunan Angkasa Raya, Jalan Ampang, 50450 Kuala Lumpur and from preventing the 2nd Plaintiff from entering and carrying out her duties as a Resident Partner at the branch office of the firm at No. 13-T1 & T2, Jalan Tengku Ampuan Zabedah B, 9/B, 40000 Shah Alam, Selangor Darul Ehsan until further order of the Court.

b) That the Defendants be restrained from preventing the Plaintiffs from operating their respective offices' and clients' accounts at the following financial institutions:

i) the 1st Plaintiff's account No: 3-0768434-35 (Client's Account) and No. 3-0768432-04 (Office Account) at Public Bank Berhad, Jalan Ampang.

ii) the 2nd Plaintiff's account No: 01201-250783 (Client's Account) and Account No: 012101-250776 (Office Account) at Malayan Banking Berhad No. 10, Persiaran Perbandaran, Seksyen 14, 40000 Shah Alam.

iii) and the Defendants be further restrained from interfering and or operating the above said accounts until further order of the Court.

c) that the Defendants whether by themselves, their servants or agents or otherwise howsoever be restrained from communicating with the clients of the 1st Plaintiff's office at Angkasa Raya, and the clients of the 2nd Plaintiff's office at Jalan Tengku Ampuan Zabedah B, 9/B, Shah Alam on the unlawful expulsion of the Plaintiffs until further order of the Court.

d) that the Defendants be restrained from removing, destroying or otherwise dealing with files, letters and any other documents from the premises of the 1st and 2nd Plaintiffs' offices.

e) that a declaration that the expulsion of the Plaintiffs by the Defendants were illegal, unlawful and null and void.

f) that a declaration be made for the formal dissolution of the partnership and that the assets of the Firm be distributed in accordance with the Partnership Act, 1950 and/or the Partnership Agreement.

g) that the *status quo* of the partnership be maintained until further order of the Court or until the formal dissolution of the partnership.

h) that a receiver and manager be appointed to take over conduct of the affairs of the firm for the purpose of winding up the firm.

i) damages.

j) costs.

k) any further and other relief this Honorable Court deems fit.

At the outset, both the plaintiffs abandoned prayers (e), (f), (h) and (i) of encl. 3. I merely took note of it. It was rather magnanimous of them.

Enclosure 3 was supported by an affidavit of the first plaintiff – Noorzilan Mohamed Noor, that was affirmed on 15 November 2002 as seen in encl. 4. By way of a reply, Abdul Shukor Mohd Khalid – the third defendant, affirmed an affidavit in reply on 20 November 2002 as seen in encl. 8 and the third defendant affirmed that affidavit on behalf of himself and the other defendants. The third defendant too affirmed a corrective affidavit on 21 November 2002 as seen in encl. 9 and he did so on behalf of himself and the other defendants. The corrective affidavit was meant to correct the affidavit in encl. 8.

The writ of summons and the statement of claim can be seen in encl. 1 and they were filed on 18 November 2002. The statement of defence dated 4 December 2000 (it must be 4 December 2002) was filed, according to the learned counsel for all the defendants, on 4 December 2002 and it was accordingly given an enclosure no: 10. It must be emphasised that the copy of the statement of defence was handed to the court by the learned counsel for the defendants in the course of the hearing of encl. 3.

The parties were magnanimous. They agreed that apart from the affidavits, I was also permitted to look at the pleadings – meaning of course, encls. 1 and 10. I did just that.

Civil Suit No: S-22-1359-02

This was an application by way of a summons in chambers as seen in encl. 4 where all the five plaintiffs, namely, Khairul Azman Kamaluddin, Nooron Aini Zakaria, Abdul Shukor Mohd Khalid, Sanisah Abdul Sani and Kamal Shahreen Esahak sought for the following orders against Noorzilan Mohamed Noor – the sole defendant:

1. satu injunksi menghalang Defendan secara sendiri, melalui agennya atau pengkhidmatnya atau mana-mana daripada mereka atau dalam sebarang cara daripada memasuki premis yang beralamat di Suite A-C, Tingkat 15,

Bangunan Angkasaraya, Jalan Ampang, 59450 Kuala Lumpur atau di mana-mana cawangan firma guaman Khairul Azman, Noorzilan, Nooron & Partners;

2. Mana-mana relief yang Mahkamah anggap adil dan patut diberikan;

3. Kos tindakan ini adalah kos dalam kausa.

Enclosure 4 was supported by an affidavit affirmed by Abdul Shukor bin Mohd Khalid on 18 November 2002 who affirmed the affidavit on behalf of himself and the other plaintiffs and that affidavit was also filed on 18 November 2002 and it can be seen in encl. 3 There was no affidavit in reply to that of encl. 3.

The writ of summons and the statement of claim can be seen in encl. 1 and they were both filed on 18 November 2002. The statement of defence and the counterclaim can be seen in encl. 6 and they were dated 16 December 2002 and filed on the next day. At the time of writing this judgment, no reply to the statement of defence and the counterclaim had been filed and this was confirmed by both sides. Since all parties agreed that I should also peruse through encls. 1 and 6 apart from the solitary affidavit in encl. 3, I would certainly do so.

Case Management

Both these two cases were case managed by Dato' James Foong J, and, on 22 November 2002, his Lordship made the following orders as reflected in the endorsements to the file covers of both cases:

(1) In respect of both enclosures 3 and 4 in respective cases, I hereby order that the firms' accounts and clients' accounts of the firm known as Khairul Azman, Noorzilan, Nooron & Partners at Bangunan Angkasaraya and Shah Alam branches shall only be operated when it involves any payment out to be with the written consent of both the plaintiffs and the defendants.

(2) Interim injunction until decision on case S-22-1359-02 is hereby granted. Costs in the cause.

It would be apparent that the interim injunction also prevailed onto the defendant in civil suit no: S22-1359-02 and that would be Noorzilan Mohamed Noor.

Facts Of The Case

The facts for both these two cases were connected to one another. For convenience, I will now narrate the facts for case no: S-22-1356-2002.

In April 1995, the first plaintiff (Noorzilan) together with the first defendant (Khairul Azman) and one Sabri Ahmad became full and equal partners of a legal firm styled as Sabri Ahmad & Khairul Azman. The second to the fifth defendants (Nooron, Abdul Shukor, Sanisah and Kamal Shahreen) and the second plaintiff (Nor Zihan) were mere legal assistants in that legal firm. On 15 August 1997, the law firm of Sabri Ahmad and Khairul Azman was dissolved and in its place the law firm styled as Khairul Azman, Noorzilan, Nooron & Partners (hereinafter referred to as the "Firm") was set up with its sole place of business at suites A-F, 15th Floor, Bangunan Angkasa Raya, Jalan Ampang, 50450 Kuala Lumpur. Now, that Firm grew stronger by the day. The contributing and founder members of the Firm were the first plaintiff (Noorzilan) and the first defendant (Khairul Azman) and each of them contributed equally to the initial capital of RM500,000 with a proviso that the said sum shall be repaid to the first plaintiff (Noorzilan) and the first defendant (Khairul Azman) in equal proportion when the reserve fund of the Firm reaches RM1 million (see cls. 6.1 and 6.3 of the partnership agreement in exh. "NZ1" of encl. 4). The second plaintiff (Nor Zihan), the second to the fourth defendants (Nooron, Abdul Shukor, and Sanisah) and the fifth defendant (Kamal Shahreen) became non-contributing partners of the Firm. They did not contribute to the initial share capital of the Firm. They also did not make any capital contribution during the continuation of the partnership.

The partnership agreement dated 15 August 1997 makes for interesting reading (see exh. "NZ1" of encl. 4). That partnership agreement contained, *inter alia*, the following provisions:

(a) that the principal place of business of the Firm shall be at Suites A-F, 15th Floor, Bangunan Angkasaraya, Jalan Ampang, 50450 Kuala Lumpur (cl. 3.1);

(b) that the assets of the partnership shall belong to the partners in the proportions in which the partners from time to time share the capital of the partnership (cl. 5.1);

(c) that the net profit of the partnership for each accounting period shall be divided equally between the partners (cl. 7.1); and

(d) that any losses shall be borne by the partners in proportion of their respective shares for the time being in the capital of the partnership (cl. 7.2).

Of pertinence would be cl. 23.1 to be read with cl. 23.1.6 of the partnership agreement. It is certainly ideal to reproduce these clauses:

23.1. If any partner shall:

23.1.6 be guilty of any conduct likely to have a serious adverse effect upon the partnership business;

then upon the partners becoming aware thereof and in any such case the other partners may by notice in writing determine the partnership as far as concern such partner whereupon such partner shall forthwith be deemed to have retired on the date of such notice.

And cl. 27.1 of the partnership agreement provides for disputes to be arbitrated and it is worded as follows:

Save where otherwise provided herein any dispute, difference or question which shall either during the partnership or afterwards arise between the partners or their respective representatives or between any partners or partner and the representatives of any other partner in relation to this deed or any matter relating to the partnership or the affairs thereof shall be referred to (a) single arbitrator agreed upon by the parties or nominated on the request of any party by the President of the Law Society and the provisions of the Arbitration Acts 1950 and 1979 shall apply to any such arbitration.

With increased profitability, the Firm grew and various branches were set up with the respective partners serving as resident partners. By way of an elaboration, it is germane to mention that:

(a) In April 1998, a branch was set up in Shah Alam with the second plaintiff (Nor Zihan) serving as the resident partner.

(b) In December 1999, a branch was set up in Masai Johor with the fifth defendant (Kamal Shahreen) who was then a legal assistant being promoted as a salaried partner to oversee this branch.

(c) In April 2000, a branch was set up in Kajang with the fourth defendant (Sanisah) acting as the resident partner. This branch was recently relocated to Bangi, Selangor.

(d) In October 2000, a branch was set up at Semua House, Jalan Bunus, Kuala Lumpur with the first defendant (Khairul Azman) becoming the resident partner.

(e) In October 2001, a litigation division of the Semua House branch was set up at the same building at a different office with the second and the third defendants (Nooron and Abdul Shukor) acting as the resident partners.

(f) The first plaintiff (Noorzilan) maintained his office at the principal place of business and he managed it in his capacity as the senior partner from the date of the inception of the Firm until the present date.

Events showed that the first plaintiff (Noorzilan) and the first defendant (Khairul Azman) recovered their initial capital contribution from the profits of the Firm. It can be said that the Firm was a successful legal enterprise with a panelship of all major banks in Malaysia and it serviced 24 property development companies in Malaysia. The Firm also had 24 corporate clients under its wing. The first plaintiff (Noorzilan) who operated at the principal place of business of the Firm – at Bangunan Angkasaraya, was totally self sufficient and often assisted the resident partners of the other branches through sporadic advances at their requests and he also brought in business activities to the Firm (see the averments at para. 16 of encl. 4). The first plaintiff (Noorzilan) was indeed enterprising. To date, the Firm had built up a strong capital reserve of about RM1 million (see the averment at para. 19 of encl. 4). The Shah Alam branch managed by the second plaintiff (Nor Zihan) prospered and was financially independent and had in built reserves from the profits accrued to the tune of RM500,000, out of which the sum of RM350,000 had been placed in the fixed deposits.

Sometimes, however, good things will not last. Sadly by letter dated 19 July 2002 (see exh. "NZ - 3(b)" of encl. 4), Maybank wrote to the Firm at the Shah Alam branch with a copy to the Bangunan Angkasaraya office complaining that the quality of the work was poor and cautioned that the Firm may be suspended or delisted from its panelship. The second plaintiff (Nor Zihan) who managed the Shah Alam branch contended that she did not receive this letter from Maybank. Again, by letter dated 29 August 2002 (see exh. "NZ - 3(c)" of encl. 4), Maybank wrote to the Firm at its Shah Alam branch complaining of unsatisfactory services. The second plaintiff (Nor Zihan), once again, contended that she never received this letter. Then, by letter dated 30 September 2002, Maybank wrote to the Firm at the Bangunan Angkasaraya office and copied it to all the Kuala Lumpur and Selangor branches suspending the Firm from panelship "due to the unsatisfactory services" (see exh. "NZ - 3(d)" of encl. 4 and exh. "AS2" of encl. 3 in civil suit no: S-22-1359-02).

That was a blow to the Firm. It was a rude shock to all the partners.

On 15 October 2002, the first defendant (Khairul Azman) – the founding member and co-contributory of the Firm, tendered his resignation from the Firm. At a partners' meeting on 28 October 2002, which was not attended by the first defendant (Khairul Azman), it was resolved by a majority (with objection by the second plaintiff (Nor Zihan) and abstention by the second defendant

(Nooron)) that the notice of resignation by the first defendant (Khairul Azman) shall take effect from 15 October 2002 (see exh. "NZ-5" of encl. 4). The partners' meeting was then adjourned at 4.10 pm to a date to be fixed subsequently.

Now, unknown to the first plaintiff (Noorzilan) and the second plaintiff (Nor Zihan), after the partners' meeting on 28 October 2002 at 4.10 p.m., a special meeting was held on 29 October 2002 by the second to the fifth defendants (Nooron, Abdul Shukor, Sanisah and Kamal Shahreen) which meeting purported to give a seven day show cause letter to the first plaintiff (Noorzilan) and the second plaintiff (Nor Zihan) regarding the suspension of the Firm's panelship with Maybank. The show cause letter that was dated 29 October 2002 was signed by the second to the fifth defendants (Nooron, Abdul Shukor, Sanisah and Kamal Shahreen) and surprisingly it was agreed by the first defendant (Khairul Azman) although his resignation had been accepted by the majority resolution of the partners' meeting that was held on 28 October 2002 (see exhs. "NZ-6(a)" of encl. 4 and "NZ-6(b)" of encl. 4).

The first plaintiff (Noorzilan) replied to the show cause letter by way of a letter dated 6 November 2002 as seen in exh. "NZ – 7" of encl. 4 and there he stated, *inter alia*, that he:

(i) invoked cl. 27 of the partnership agreement to refer the disputes and differences to arbitration; and

(ii) challenged the legality of the special meeting that was held on 29 October 2002.

The second plaintiff (Nor Zihan) also replied by way of a letter dated 30 October 2002 as seen in exh. "NZ-8" of encl. 4 and there she claimed that she had taken all the necessary steps in the circumstances. By letter dated 12 November 2002 as seen in exh. "NZ-9" of encl. 4, the second to the fifth defendants (Nooron, Abdul Shukor, Sanisah and Kamal Shahreen) and with the written consent of the first defendant (Khairul Azman) who had resigned, refused to submit to arbitration and they claimed that they had a right to the special meeting.

Events then moved swiftly.

By letter dated 13 November 2002, the second to the fifth defendants (Nooron, Abdul Shukor, Sanisah and Kamal Shahreen) and with the written consent of the first defendant (Khairul Azman) who had resigned proceeded to invoke and did invoke cl. 23.1.6 of the partnership agreement and expelled the first and the second plaintiffs (Noorzilan and Nor Zihan) by giving them 48 hours to clear their personal belongings (see exh. "NZ-10" of encl. 4). On the same

day and that would be on 13 November 2002, the first plaintiff (Noorzilan) replied and he stated that he considered the notice of expulsion to be illegal and null and void and that he would continue to consider himself as a partner (see exh. "NZ-11" of encl. 4). On the same day too the defendants put a security guard at the Bangunan Angkasaraya office and refused entry to the first plaintiff (Noorzilan). The cheque books for the clients and the office accounts for the Bangunan Angkasaraya office have been removed from the said office.

The Analysis And The Law In Regard To Civil Suit No: S-22-1356-02.

Notwithstanding the presence of cl. 27.1 of the partnership agreement which provides for disputes to be arbitrated, the learned counsel for the defendants argued that there was no specific clause in the partnership agreement governing arbitration and he seemed to have fashioned his argument solely on cl. 23.1.6 of the partnership agreement. Indeed it was the learned counsel's submission on behalf of the defendants that under cl. 23.1.6 of the partnership agreement that upon issuance of the notice of expulsion there was no requirement that the matter should be referred to arbitration. This was certainly unlike the case of *Green v. Howell* [1910] 1 Ch 495 CA. In that case, a deed of partnership provided that, in the event of either partner committing any breach of the partnership articles or any other flagrant breach of his duties as a partner, the other partner might by notice in writing terminate the partnership, provided that if any question should arise whether a case had happened to authorise the exercise of this power it should be determined by arbitration, if the offending partner so requested in writing within a given time. Under this clause one partner, without any preliminary warning to his co-partner, served him with a notice of dissolution on the ground that he had committed breaches of certain specified articles and had also committed a flagrant breach of his duties as a partner. In affirming the decision of Neville J, the Court of Appeal (Cozens-Hardy MR, Buckley LJ and Joyce J) held that, in the absence of *mala fides*, it was not a condition precedent to the validity of the notice that the partner serving the notice should before serving it disclose to his co-partner the causes of complaint against him or give him an opportunity of being heard in his defence, and that the notice was valid. Obviously, the deed of partnership in *Green v. Howell (supra)* contained an arbitration clause. Likewise here, there was cl. 27.1 of the partnership agreement which allowed arbitration to be resorted to in the event of a dispute.

An arbitration clause existed in the case of *Re A Solicitors' Arbitration* [1962] 1 All ER 772. In that case, three solicitors, Egerton, Nicholas and Smeaton had entered into a deed of partnership. Egerton served on the other two a notice to expel them from the partnership for their alleged misconduct and on the same day Nicholas and Smeaton together served a notice on Egerton to expel him

for his alleged misconduct. Ultimately the matter reached arbitration and the arbitrator held that neither notice was effective: in the case of the notice given by Egerton the arbitrator held that to be so on the ground that, apart from the facts, Egerton had no power to expel Nicholas or Smeaton except as a joint action with Nicholas or Smeaton. Clause 31 of the deed of partnership provided, "If during the continuance of the partnership any partner shall commit or be guilty of any act of professional misconduct ... then and in any such case the other partners may by notice in writing given to him ... expel him from the partnership … ." Clause 32 provided that if any question arose whether a case had occurred to authorise the exercise of the power under cl. 31 the question should be referred to arbitration. The arbitrator stated in the form of a special case for the decision of the High Court the question whether under cl. 31, Egerton alone had the power to expel Nicholas and Smeaton from the partnership. His Lordship Russell J, held that the effect of cl. 31, taken by itself, was that on a default by a partner within cl. 31, all the partners other than he could jointly expel him; and if the clause were read with s. 61(c) of the Law of Property Act 1925 – where it was provided that the singular included the plural and *vice versa*, the effect still was that a default by one partner fell to be considered by all the other partners or a sole partner if there were but one such partner. Accordingly, his Lordship held that Egerton alone had no power to expel Nicholas and Smeaton from the partnership.

I pause here for a moment. I have to take stock of the situation. I need to revert back to the case of *Green v. Howell (supra)* where the grounds on which the notice was given were stated in this manner:

> (1) You have committed breaches of all or some of the following clauses of the said deed, namely, clauses 6, 9, 10, 11, 12, 13 and 14.
>
> (2) You have committed a flagrant breach of your 'duties as a partner' within the meaning of clause 17 of the said deed.
>
> (3) You have acted contrary to the good faith which ought to be observed between partners.

The plaintiff in *Green v. Howell (supra)* then brought the action and sought for a declaration that the partnership was duly determined by the notice and for consequential relief, and the plaintiff also asked for an interlocutory injunction. Neville J at the court of first instance considered the case of *Blisset v. Daniel* [1853] 10 Hare 493, 1022 and his Lordship said (see p. 500 to p. 501 of the report):

> I have been referred to *Blisset v. Daniel* 10 Hare, 493 and many other cases, in which it has been held, and the principle has been laid down in the widest

possible terms over and over again, that where a question of this kind – a question of expulsion – has to be determined either by the other party or by members of a committee, or by a majority of the partners, or by any other domestic tribunal constituted by agreement between the parties, that discretion cannot be exercised unless and until the accused party has had the opportunity of laying his case before the tribunal which has to judge him and giving them the opportunity of coming to a just conclusion. I think that principle is clear beyond the possibility of dispute, founded in natural justice, and established, I was going to say by innumerable, but certainly by numerous decisions. But it does not appear to me that those authorities have any bearing upon the case before me. Here it is not for either party to decide whether he is entitled to expel his partner from the partnership or not. He is only given the power to put certain proceedings into train whereby it shall ultimately be decided by the proper tribunal. Unless, of course, the partner to whom the notice is given admits his delinquency and desires to carry the matter no further, the partner who gives the notice merely puts in train proceedings for obtaining the decision by the proper tribunal of the question arising between the parties, and I fail to see what bearing upon a contract of that kind the cases that have been cited have. But the cases cited do not end there, and the case of *Barnes v. Youngs* [1898] 1 Ch 414 was cited to me, which was decided by Romer J. when he was sitting as a judge of first instance. The application before him was an application on the part of the partners who had given the notice – the notice was there given by several partners – to stay proceedings in an action and to refer the matter to arbitration, and what the learned judge had to consider and decide was whether it was a case more fitted to be tried in a Court of justice, or whether it was better that it should go to the domestic forum which had been provided by the parties, and he decided on the facts of that case that it was better that the matter should be tried by the Court. But I cannot read the judgment without seeing that he does express an opinion that in the agreement before him (and so far as it is reported it bears a strong resemblance to the present agreement) the same formalities were necessary between the partners as would have been necessary in a case where the decision rested with one of them, and that the partners giving the notice in that case ought to be treated as being under the obligation which they would be under had they themselves formed the tribunal which should decide whether the partner who had received the notice was to go or whether he was to stay. As a decision of course in that particular case I have nothing to say to it; it may have been perfectly right, but if it was intended to lay down a general principle applicable to all cases where partners have agreed that one may give notice to another of dismissal, and the question of the validity of that notice shall be determined by a tribunal which they have created themselves, then, with the greatest possible respect, I dissent from that view. I come therefore to the conclusion that the plaintiff has given a good notice of dismissal to the defendant, and that it was unnecessary to specify, at all events to any greater extent than has been done, what was the nature of the complaint against the defendant.

At p. 502 of the report, his Lordship Neville J rounded it up by saying:

> In the result his Lordship declared that the partnership was determined by the notice and directed accounts and inquiries on that footing. He also granted an injunction in the terms of clause 17, but, the plaintiff by his counsel consenting, this injunction was not to prevent the defendant from carrying on his existing business of a fish salesman at Billingsgate.

The learned counsel for both the plaintiffs drew my attention to s. 37(f) of the Partnership Act 1961 which enacts as follows:

> 37. Dissolution by the court
>
> On application by a partner, the court may decree a dissolution of the partnership in any of the following cases:
>
> (f) whenever in any case circumstances have arisen which, in the opinion of the court, render it just and equitable that the partnership be dissolved.

and he submitted that in the instant case, one co-founder and contributory (the first defendant – Khairul Azman) had tendered his resignation and the other co-founder and contributory (the first plaintiff – Noorzilan) had been given a notice of expulsion by the other non-contributories. The learned counsel for both the plaintiffs proceeded to submit to the effect that while the issue of dissolution was being adjudicated, the status quo ought to be maintained in that both the plaintiffs ought to be allowed to exercise their rights as partners until their partnerships have been dissolved. It was for these reasons that both the plaintiffs sought for the prayers in encl. 3 pending the hearing of the writ. It must be recalled that the first plaintiff (Noorzilan) had expressly invoked the arbitration clause. In *Hall v. Hall* [1850] 12 Beav. 414, at p. 1119, the court granted an injunction in a partnership dispute. That was a case where a partner having excluded his co-partner, the court granted an injunction to restrain that partner from obstructing or interfering with his co-partner in the exercise and enjoyment of the co-partner's rights under the partnership articles. In that case, there was a disagreement and one partner, by letter, proposed to the other, either to retire or to refer to arbitration. The other partner agreed that he should retire but subject to a condition as to the taking of the accounts. The court held, on the facts, that the partnership was not dissolved.

Should I grant the injunctions which the plaintiffs sought for in enclosure 3? I would certainly answer it in the positive. I will elaborate further. The Firm was doing extremely well. It grew and expanded. The bulk of the work came from Maybank. But because of "unsatisfactory services" Maybank suspended the Firm from its panelship. Instead of trying their level best to regain that panelship with Maybank the parties started to point an accusing finger at one

another. What a pity? The first plaintiff (Noorzilan) by letter dated 4 October 2002 appealed to Malayan Banking Berhad for the suspension to be lifted. That letter was written by the first plaintiff (Noorzilan) using the letterhead of the Firm and it was worded as follows (see exh. "NZ-4(e)" of encl. 4):

Your ref: ELC/ZM/NSK/ZAZ/eni Private & Confidential

Our ref: NZN/MBB-susp./30902
Date: 4th October, 2002

MALAYAN BANKING BERHAD (3813-K)
Enterprise Loans Centre,
Level 4, No. 10,
Persiaran Perbandaran
Section 14,
40000 Shah Alam,
Selangor Darul Ehsan.

Kind attention of: Puan Zailan Binti Mohamed (Centre Manager)

Dear Sirs/Madam,

SUSPENSION FROM MAYBANK'S PANEL OF SOLICITORS – APPEAL AND REVIEW AGAINST SUSPENSION

We refer to the letter issued by your legal department dated 30th September, 2002 and to the reply by our Shah Alam's Branch *vide* letter dated 1st October, 2002 and write to appeal against the decision by your management committee to suspend our firm from attending to all conveyancing and litigation matters for the time being until such time as the Bank may deem fit to review such suspension.

We wish to tender our humblest of apologies to your esteemed organisation in the event if our Angkasaraya Office, Shah Alam branch or any other branch or branches had at any point of time committed any serious breach in discharging our duties as solicitors for the Bank. We further undertake that we shall at all material times uphold and safeguard the Bank's interest and shall not compromise the Bank's position in any situation, manner or form whatsoever should our firm be allowed to continue rendering services to your esteemed organisation in the future.

As such, we would be much obliged if your goodoffice could consider our appeal against the suspension imposed pursuant to the said letter and we further undertake to improve our services in the future should the appeal be allowed.

Yours sincerely,
Khairul Azman, Noorzilan, Nooron & Partners

Sgn. (Illegible)
(Noor Zilan Bin Mohamed Noor)

c.c. 1. Legal Department
Menara Maybank
100, Jalan Tun Perak
50050 Kuala Lumpur

By Hand/By Fax
Fax No: 20707349

File Ref: LGL/GK/NB-ps

Kind attention of:

1. Miss Geraldine Kamalanathan/Puan Norlida Baharuddin
2. Partners of Khairul Azman, Noorzilan, Nooron & Partners

I was informed at the bar by the learned counsel from both sides that this letter of appeal had not been rejected by Maybank. I accept the heartening words of the learned counsel from both sides and so there was still hope that Maybank may lift the suspension and re-enlist the Firm in its panelship.

But it must be emphasised that the court will interfere at the instance of a partner and will by injunction restrain the other partners from making any change in the nature of the business and in transacting any such business in the Firm's name. It must be remembered that the Firm is a legal firm with a huge clientele. There was no allegation that both the plaintiffs had come to court with unclean hands. As I see it both the plaintiffs come to court and seek injunctions and they come with clean hands (*Ganad Media Sdn Bhd v. Dato' Bandar Kuala Lumpur (No 2)* [2002] 6 CLJ 6, 33).

Instances where the courts have granted injunctions between the partners are quite numerous. Thus, where a partner has been wrongfully expelled from the firm or wrongfully excluded from the enjoyment of the affairs of the partnership business by its co-partners, the court would readily grant an injunction restraining the other partners from preventing him from participating and taking part in the business of the firm (*Ganpat v. Annaji* [1898] ILR 23 Bom 144 and *Virudachala Nattan v. Ramasami Nayakan* 1 Mad HCR 341). The court too would issue an injunction against a partner restraining that partner from using the assets of the firm in a separate business carried on for that partner's own benefit. An injunction would also be granted to prevent one partner from using the assets of the partnership for the renewal of a lease against the will of the other partner (*Clements v. Norris* [1878] 8 Ch D 120). Lindley on Partnership had this to say at p. 531 thereof:

> Mere squabbles and improprieties, arising from infirmities of temper, are not considered sufficient ground for an injunction; but if one partner excludes his co-partner from his rightful interference in the management of the partnership

affairs, or if he persists in acting in violation of the partnership article on any point of importance, or so grossly misconducts himself as to render it impossible for the business to be carried on in a proper manner, the court will interfere for the protection of the other partners.

The learned authors in the persons of William Williamson Kerr and John Melvin Paterson in a book entitled *"A Treatise On The Law And Practice Of Injunctions"*, 6th edn, wrote at p. 513 to p. 515 of the book:

The Court has jurisdiction to restrain by injunction one or more members of a partnership firm from doing acts inconsistent with the terms of the partnership agreement, or with the duties of a partner.

An injunction will not be refused simply because a dissolution of partnership is not sought (*Fairthorne v. Weston*, 3 Ha. 387; 13 L.J. Ch. 263; 64 R.R. 342; *Richardson v. Hastings*, 7 Beav. 301; 13 L.J. Ch. 129; 64 R.R. 86; *Watney v. Trist*, 45 L.J. Ch. 412; *J. v. S.*, [1894] 3 Ch. 74; 63 L.J. Ch. 615). Where accordingly, a member of a partnership firm who had been suffering from temporary insanity had recovered, but was excluded by his co-partners from the management of the affairs of the partnership, they were restrained from preventing him from transacting the business of the partnership as a partner (Anon., 2 K. & J. 441; 110 R.R. 308. In *J. v. S.*, *supra*, a partner of unsound mind was restrained from interfering in the conduct of the partnership affairs). So also, disputes having arisen among the partners in a firm, formed for twenty-one years and determinable on twelve months' notice by either party, one of the partners was restrained from excluding his co-partner from the partnership business, and from obstructing or interfering with the plaintiff in the exercise or enjoyment of his right under the partnership articles (*Hall v. Hall*, 12 Beav. 414; 3 Mac. & G. 79; 20 L.J. Ch. 585; 87 R. R. 15), and from applying any of the funds or effects of the partnership, otherwise than in the ordinary course of business, though no dissolution was sought (*Hall v. Hall, supra*. See *Gardner v. M'Cutcheon*, 4 Beav. 534; 55 R.R. 154). So also, one partner was restrained from pulling down, altering, or adding to the partnership premises without the consent of the other partners (*Elmslie v. Beresford* [1873], W.N. 152). So also, where a partnership term had not expired, one of the partners who purported to retire from the partnership and entered into a new partnership for carrying on business of the same character and nature was restrained from carrying on such business with his new partners, or with any other person than his old co-partners, until the expiration of the term; and from publishing or circulating any notice of the dissolution of the old firm, before the expiration of the term for which it had been entered into (*England v. Curling*, 8 Beav. 129; 68 R.R. 39). So also, a partner was restrained from using the firm's name in a business carried on by him on his own account, though such business was so far beyond the scope of that of the firm that he was not bound to account for the benefit derived from it (*Aas v. Benham*, [1891] 2 Ch. 244; 65 L.T. 25. See the Partnership Act, 1890, s 29).

So also, where partnership articles provided that proper books of account should be kept by the managing partners and that each partner should have free access to and liberty to examine and copy or take extracts from any of the books and writings of the partnership at all reasonable times, it was held that under this provision (as well as under section 24, sub-section 9 of the Partnership Act, 1890) a partner was entitled to have the books and accounts examined on his behalf by an agent appointed by him for the purpose, provided that the agent was a person to whom no reasonable objection could be taken by the other partners, the agent undertaking not to make use of the information which he should thus acquire except for the purpose of confidentially advising his principal, and an injunction restraining the defendants from preventing the exercise of this right by the plaintiff was accordingly granted (*Bevan v. Webb*, [1901] 2 Ch. 59; 70 L.J. Ch. 536. See *Norey v. Keep*, [1909] 1 Ch. 564; 78 L.J. Ch. 334 (a case under the Trade Union Act, 1871), followed in *Dodd v. Amalgamated Marine Workers Union*, [1923] 2 Ch. 236; [1924] 1 Ch 116; 93 L.J. Ch. 65, 100; and section 6, sub-section 1 of 7 Edw. 7, c. 24, as to the right of a limited partner and his agent to inspect the firm books; *Davies v. Gas Light and Coke Co.*, [1909] 1 Ch. 248, 708; 78 L.J. Ch. 445, a case under the Companies Clauses Act, 1845).

So also, the Court will restrain by injunction the exercise of a power of expelling a partner, where the power is not exercised *bona fide*, or in accordance with the terms of the partnership deed (See *Blisset v. Daniel*, 10 Hare, 493; 90 R.R. 454; *Wood v. Wood*, L.R. 9 Ex. 190; 43 L.J. Ex. 153; *Russell v. Russell*, 14 Ch. D. 471; 49 L.J. Ch 268; *Carmichael v. Evans*, [1904] 1 Ch. 490; 73 L.J. Ch. 329; *Green v. Howell*, [1910] 1 Ch. 504; 79 L.J. Ch. 549). But if the power is exercisable at the will and pleasure of the other partner, the Court will not interfere in the absence of *mala fides* (*Blisset v. Daniel*, *supra*; *Russell v. Russell*, 14 Ch. D 479, 480; 49 L.J. Ch. 268). Where, however, the power is exercisable in the event of a partner's misconduct, the Court will inquire whether it has been properly exercised (*Wood v. Wood*, L.R. 9 Ex. 196; 43 L.J. Ex. 153. See *Cooper v. Page*, 34 L.T. 90; and *Green v. Howell*, *supra*; *Rex v. Housing Appeal Tribunal*, [1920] 3 K. B. 341; 89 L.J. K.B. 1138), and when his co-partners are the tribunal to determine the question of expulsion, will restrain them from expelling him if he has not been given notice of the grounds of complaint against him, and had an opportunity of defending himself (See *Green v. Howell*, [1910] 1 Ch. 500, 504; 79 L.J. Ch. 549). But where the question whether the partner is or is not properly expelled has to be determined, not by his co-partners, but by the Court, or arbitration, the expelling partners are under no obligation to inform him of the charges against him, or to give him an opportunity of being heard before serving the notice of expulsion (*Green v. Howell*, [1910] 1 Ch. 495; 79 L.J. Ch. 549, overruling on this point *Barnes v. Youngs*, [1898] 1 Ch. 414; 67 L.J. Ch. 263).

In a case where there was power to expel a partner for 'any flagrant breach of any of the duties of a partner,' the Court refused to grant an interlocutory injunction restraining the expulsion of the plaintiff who had been convicted of

having travelled without a ticket with intent to avoid payment, holding that such conduct was likely to do serious injury to the partnership business, whereas the exclusion of the plaintiff would not inflict irreparable injury upon him, and he would have his remedy, if at the trial it should be held that he ought not to have been excluded (*Carmichael v. Evans,* [1901] 1 Ch. 486; 73 L.J. Ch. 329).

All these are certainly thought provoking. The guidelines set out by Gopal Sri Ram JCA in *Keet Gerald Francis Noel John v. Mohd Noor @ Harun bin Abdullah & 2 Ors* [1995] 1 CLJ 293 CA, particularly of the report are certainly useful to apply and I have applied them in this judgment vigorously.

A partner has a duty to his fellow partners. That is the very heart and soul of a partnership relationship. It is an onerous duty. It is a duty which requires a partner to act openly, fairly and honestly in all partnership dealings. A partner is even prohibited from obtaining any private benefit at the expense of the Firm. This is a common law duty.

In statutory form we have the Partnership Act 1961 (Act 135), and s. 30 thereof enacts as follows:

Duty of partners to render accounts, etc.

30. Partners are bound to render true accounts and full information of all things affecting the partnership to any partner or his legal representatives.

and the importance of this particular section can never be denied. Thus, in relation to decisions taken at the insistence of a majority against the opposition of the remaining partners or where the question of a partner's expulsion or compulsory retirement arises, this very section would certainly come into play (*Blisset v. Daniel* [1853] 10 Hare 493). The bigger the Firm, like the present case, the bigger and greater will be the difficulty in keeping all the partners fully au fait with the developments affecting the practice as a whole. Every partner has the right to know what is being carried on in his Firm's name and for which he is ultimately answerable. It is germane to mention that a partner must not be prohibited from gaining access to information upon reasonable request.

On the issue of dissolution, I have this to say. Under s. 37(e) of the Partnership Act 1961 (Act 135) the court may dissolve the firm when the partnership business "can only be carried on at a loss." In *Jennings v. Baddeley* [1853] 3 K & J 78, a firm was in dire need of finance in order to churn out profits and the court held that since the business could only be carried on at a loss,

the firm was ordered to be dissolved. By comparison would be the case of *Handyside v. Campbell* [1901] 17 TLR 623 where the partner's illness prevented him to attend to the partnership business and it caused a loss to the firm and the court refused to dissolve the partnership on the ground that there was nothing to show that it was practically impossible for the firm to make profits in the future. Likewise here, no one knows about the future particularly whether Maybank may lift the suspension and re-enlist the Firm in its panelship and so any idea of wanting to dissolve the partnership must be put in abeyance. Of course, the court is empowered and may dissolve the Firm when it is of the opinion that it is "just and equitable" to do so (see s. 37(f) of the Partnership Act 1961 (Act 135)). In the words of Lord Cozens Hardy MR in *Re Yenidje Tobacco Co Ltd* [1916] 2 Ch 426, 430:

> ... Refusal to meet on matters of business; continued quarrelling, and such a state of animosity as precludes all reasonable hope of reconciliation and friendly co-operation have been held sufficient to justify a dissolution. It is not necessary, in order to induce the court to interfere, to show personal rudeness on the part of one partner to the other, or even any gross misconduct as a partner. All that is necessary is to satisfy the court that it is impossible for the partners to place that confidence in each other which each has a right to expect, and that such impossibility has not been caused by the person seeking to take advantage of it.

The affidavits are too scanty. It did not show that there was "continued quarrelling" among the partners. Neither did it show that there was no "hope of reconciliation" between the partners. There was, however, "personal rudeness" demonstrated in para. 6.1 of encl. 8 to the effect that the first plaintiff (Noorzilan) had purportedly uttered words like "binatang" (animal), and "kejam" (cruel) to the second till the fifth defendants (Nooron, Abdul Shukor, Sanisah and Kamal Shahreen). But notwithstanding all these, of crucial importance was the fact that the plaintiffs here did not ask that the partnership be dissolved. The prayers sought for in encl. 3 did not seek for the dissolution of the partnership and so I refrained from saying anything further.

From the facts, there were certainly material issues that needed ventilation and adjudication. Suffice for this exercise that I refer to some of them:

(1) Whether the special partners' meeting that was held on 28 October 2002, without the presence of the first defendant (Khairul Azman) and both the plaintiffs (Noorzilan and Nor Zihan), where the decision was taken to issue the notice to show cause to both the plaintiffs (Noorzilan and Nor Zihan) was regular or irregular?

(2) Whether the partners' meeting on 12 November 2002, without the presence of the first defendant (Khairul Azman) and both the plaintiffs (Noorzilan and Nor Zihan), where the decision was taken to issue the notice to show cause to both the plaintiffs (Noorzilan and Nor Zihan) was regular or irregular?

(3) Whether circumstances have arisen to justify the show cause letters?

(4) Whether the notice of expulsion is vitiated by *mala fide*?

It was contended on behalf of the plaintiffs (Noorzilan and Nor Zihan) that the wrongful interference and obstruction by the defendants (Khairul Azman, Nooron, Abdul Shukor, Sanisah and Kamal Shahreen) of the plaintiffs' exercise of their rights as partners of the Firm was a continuing episode. It was for these reasons, that both the plaintiffs (Noorzilan and Nor Zihan) sought for an interim injunction pending trial in order to restrain the defendants as named from interfering with the plaintiffs' rights as partners in the Firm. In *Ganpat v. Annaji (supra)*, the plaint there stated that the parties to the suit were full brothers possessed of joint ancestral property, consisting of, *inter alia*, a shop at Poona; and that the defendant did not allow the plaintiff to enter the shop nor to inspect the account books nor to take part in the management of the shop; and basically the defendant had been acting in a manner detrimental to the joint business. The plaintiff then sued (1) for an account of the cash, stock in trade and of the debts and liabilities of the shop at Poona and for an award of such sum as might be found due to him on taking accounts; (2) that the defendant might be held liable for such sums as might have been lost by negligence or laches on his part; and (3) for an injunction restraining the defendant from excluding the plaintiff from the joint possession and management of the shop at Poona. The defendant then pleaded that he and the plaintiff were not joint partners and did not carry on joint dealings; and that a partition had been effected between the parties in accordance with an award dated 16 August 1894; and that the suit as framed would not lie. Farran CJ held at p. 145 of the report:

> There is no rule of law which prevents the court from interfering to protect a partner in the enjoyment of his rights. The cases will be found collected in Lindley on Partnership, page 538, and Ker on Injunctions, page 510. We need only refer to the case of *Z v. X* [1855] 2 K. and J. page 441, where an injunction was granted restraining the other partners from preventing one member of the firm from transacting the business of the partnership.

Coomaraswamy J in *Arif v. Yeo & Anor* [1990] 1 MLJ 218 granted the plaintiff's application to continue operating the partnership business from the partnership premises until trial and his Lordship had this to say at p. 220 of the report:

As regards their rights inter se, there is a particular apposite passage from *Lindley on Partnership* (15th Ed) p. 656:

> **Injunction in case of misconduct**.
>
> …, it is necessary to make a few observations on the kind of misconduct which will induce the court to grant an injunction against one partner at the suit of another. Mere squabbles and improprieties, arising from infirmities of temper, are not considered sufficient ground for an injunction; … Where, **however, the partner complained of has by agreement been constituted the active managing partner, the court will not interfere unless a strong case be made out against him**. (Emphasis is added).

Further, in the case of *Automatic Self-Cleansing Filter Syndicate Co Ltd v. Cuninghame* [1906] 2 Ch 34, Cozens-Hardly LJ, at p 44, had the opportunity to approve the above passage, *albeit* in *obiter dicta*:

> Take the case of an ordinary partnership. If in an ordinary partnership there is a stipulation in the partnership deed that the partnership business shall be managed by one of the partners, it would be plain that in the absence of misconduct, or in the absence of circumstances involving the total dissolution of the partnership, the majority of the partners would have no right to apply to the court to restrain him or to interfere with the management of the partnership business. I would refer to what is said in Lindley on Partnership (7th Ed) p 574: 'Where, however, the partner complained of has by agreement been constituted the active managing partner, the court will not interfere with him unless a strong case be made out against him' – that is to say, unless there is some case of fraud or misconduct to justify the interference of the court.

Continuing at the same page, this was what his Lordship said:

> Damages would not be an adequate remedy to compensate the plaintiff for the loss of credibility, creditworthiness and standing in business circles which he would suffer if he were excluded from management at this stage.

The same would also be true here. Both the plaintiffs' (Noorzilan and Nor Zihan) "credibility", and "standing in the legal circles" would tremendously suffer if they were to be excluded from running the Firm. Their integrity too would be at stake.

It must be borne in mind that the first plaintiff (Noorzilan) is a senior partner who is in active legal practice and having the management and control of the principal place of business at Bangunan Angkasaraya. Definitely he has standing and has goodwill with the clientele and his professional reputation is at stake here. Damages would certainly not be an adequate remedy. The same would

also be true for the second plaintiff (Nor Zihan) who manages the Shah Alam branch.

For the reasons adumbrated above, I gave an order in terms of encl. 3 for prayers (a), (b)(i), (b)(ii), (b)(iii), (c), (d), (g) and (j). In regard to prayer (k), I made the following orders:

That the order of YA Dato' James Foong on 22 November 2002 that in respect of both encls. 3 and 4 in the respective cases (S-22-1356-2002 and S-22-1359-2002), that the firms' accounts and clients' accounts of the Firm known as Khairul Azman, Norzilan, Nooron & Partners at Bangunan Angkasaraya and Shah Alam branches shall only be operated when it involves any payment out to be with the written consent of both the plaintiffs and the defendants in the respective cases be and are hereby affirmed and I too order that the order of YA Dato' James Foong be extended to the other branches of the said Firm.

The Analysis And The Law In Regard To Civil Suit No: S-22-1359-02

It must be recalled that the summons in chambers in encl. 4 was supported by an affidavit in encl. 3 and there was no affidavit in reply emanating from the sole defendant by the name of Noorzilan bin Mohamed Noor.

The plaintiffs (Khairul Azman, Nooron, Abdul Shukor, Sanisah and Kamal Shahreen) sought for, by way of encl. 4, a perpetual injunction to restrain the sole defendant (Noorzilan) from entering his office at Bangunan Angkasaraya or in the other branch offices of the Firm. The relief sought in prayer 1 of encl. 4 is identical to prayer 50(i) of the statement of claim. That prayer 1 of encl. 4 was worded in this way:

> 1. Satu injunksi menghalang defendan secara sendiri, melalui agennya atau pengkhidmatnya atau mana-mana daripada mereka atau dalam sebarang cara daripada memasuki premis yang beralamat di suite A-C, Tingkat 15, Bangunan Angkasaraya, Jalan Ampang, 59450 Kuala Lumpur atau di mana-mana cawangan firma guaman Khairul Azman, Noorzilan, Nooron & Partners.

and prayer 50(i) of the statement of claim was also worded in the same way.

A submission was made to the effect that encl. 4 should be dismissed with costs because it was an interlocutory application for a perpetual injunction and it was said to be misconceived and bad in law.

Two sections in the Specific Relief Act 1950 must be referred to. One is s. 51 and the other is s. 52. I will now reproduce these two sections:

> 51. (1) Temporary injunctions are such as are to continue until a specified time, or until the further order of the court. They may be granted at

any period of a suit, and are regulated by the law relating to civil procedure.

(2) A perpetual injunction can only be granted by the decree made at the hearing and upon the merits of the suit; the defendant is thereby perpetually enjoined from the assertion of a right, or from the commission of an act, which would be contrary to the rights of the plaintiff.

52. (1) Subject to the other provisions contained in, or referred to by this Chapter, a perpetual injunction may be granted to prevent the breach of an obligation existing in favour of the applicant, whether expressly or by implication.

In *Gibb & Co v. Malaysia Building Society Bhd* [1982] 1 CLJ 185; ([1982] CLJ (Rep) 99), the Federal Court (Raja Azlan Shah CJ, Salleh Abas FJ, Abdoolcader J) speaking through Abdoolcader J., granted an interlocutory injunction which virtually gave the applicant the whole relief. At p. 186 (p 103) of the report, his Lordship Abdoolcader J, aptly said:

> Whole relief granted by interlocutory order. The short answer to the issue raised in this respect is that the Court is not precluded from granting an interlocutory injunction where this would virtually give the applicant therefor on his claim the full relief actually sought to be secured at the final hearing when the matter is viewed on a balance of convenience (*Woodford v. Smith* [1970] 1 WLR 806, 817, 818 (at pp. 817-818); *Wah Loong (Jelapang) Tin Mine Sdn. Bhd. v. Chia Ngen Yiok* [1975] 2 MLJ 109 (at p. 114); *Sivaperuman v. Heah Seok Yeong Realty Sdn. Bhd.* [1979] 1 MLJ 150. If there is plainly no defence to the action, and the only object in raising a defence is delay, an injunction should issue even if it gives the applicant his whole remedy before the trial (*Manchester Corporation v. Connolly* [1970] 1 Ch 420, 427 (at p. 427)).

That was indeed interesting.

Now, in *Cayne & Another v. Global Natural Resources plc* [1984] 1 All ER 225, the Court of Appeal (Eveleigh, Kerr and May LJJ) laid down the following principle of law (see p. 225 – the headnote):

> Where the grant or refusal of an interlocutory injunction will have the practical effect of putting an end to the action, the court should approach the case on the broad principle of what it can do in its best endeavour to avoid injustice, and to balance the risk of doing an injustice to either party. In such a case the court should bear in mind that to grant the injunction sought by the plaintiff would mean giving him judgment in the case against the defendant without permitting the defendant the right of trial. Accordingly, the established guidelines requiring the court to look at the balance of convenience when deciding whether

to grant or refuse an interlocutory injunction do not apply in such a case, since, whatever the strengths of either side, the defendant should not be precluded by the grant of an interlocutory injunction from disputing the plaintiff's claim at a trial.

Eveleigh LJ writing a separate judgment had this to say (see p. 233 of the report):

The question, it seems to me, is: should the court exercise its discretion bearing in mind all the circumstances of the case, when to decide in favour of the plaintiffs would mean giving them judgment in the case against Global without permitting Global the right of trial? As stated that way, it seems to me that that would be doing an injustice to the defendants.

While May LJ, also writing a separate judgment, aptly said at p. 238 of the report:

At this juncture I quote another short passage from the speech of Lord Diplock in the *NWL* case [1979] 3 All ER 614 at 625, [1979] 1 WLR 1294 at 1306, where he said:

> ... when properly understood, there is in my view nothing in the decision of this House in *American Cyanamid v. Ethicon Ltd* to suggest that in considering whether or not to grant an interlocutory injunction the judge ought not to give full weight to all the practical realities of the situation to which the injunction will apply. *American Cyanamid Co v. Ethicon Ltd*, which enjoins the judge on an application for an interlocutory injunction to direct his attention to the balance of convenience as soon as he has satisfied himself that there is a serious question to be tried, was not dealing with a case in which the grant or refusal of an injunction at that stage would, in effect, dispose of the action finally in favour of whichever party was successful in the application, because there would be nothing left on which it was in the unsuccessful party's interest to proceed to trial.

With those considerations in mind, I do not think that in cases such as the present, whatever the strengths on either side, where the decision on an interlocutory application for an injunction will effectively dispose of the claim, the court can legitimately, nor is it bound, to apply the Cyanamid guidelines, which, as I have already said, I think are based on the proposition that there will be a proper trial at a later stage when the rights of the parties will be determined.

It may well be that it is the same ultimate consideration which the court has in mind, namely the question whether it is likely to do an injustice. Where a plaintiff brings an action for an injunction, I think that it is, in general, an injustice to grant one at an interlocutory stage if this effectively precludes a defendant from the opportunity of having his rights determined in a full trial.

> There may be cases where the plaintiff's evidence is so strong that to refuse an injunction and to allow the case to go through to trial would be an unnecessary waste of time and expense and indeed do an overwhelming injustice to the plaintiff. But those cases would, in my judgment, be exceptional.
>
> In general, as I say, where a plaintiff brings an action and in it seeks an interlocutory injunction on the basis that the defendant has breached the former's rights, then justice requires that that defendant should be entitled to dispute the plaintiff's claim at a trial, and if the grant of the injunction would preclude this then it should not be granted on an interlocutory basis.

To grant an injunction as sought by the plaintiffs (Khairul Azman, Nooron, Abdul Shukor, Sanisah, and Kamal Shahreen) would stifle the attempts at lifting the suspension imposed by Maybank. That would certainly be a bad move. The Firm also carries the name of the sole defendant. The sole defendant too is a senior partner and he manages and controls the principal place of business of the Firm and that would be at Bangunan Angkasaraya. He is certainly a responsible senior partner and it was he who wrote that letter of appeal to Maybank as reproduced somewhere in this judgment. To grant the plaintiffs (Khairul Azman, Nooron, Abdul Shukor, Sanisah and Kamal Shahreen) the injunction as per prayer 1 of encl. 4 would be to effectively preclude the sole defendant here (Noorzilan) of the opportunity of having his rights determined at a full trial. Justice requires that the sole defendant here should be entitled to challenge and dispute the plaintiffs' claims at a trial.

Incidentally, the writ and the statement of claim as seen in encl. 1, does not have a prayer for any other relief other than for an injunction. Surprisingly, there is no prayer for any declaratory or other relief in encl. 1, apart from damages. I say that by looking at encl. 1, there is no cause of action known to law and in law. The right to an interlocutory relief is, by itself, not a known cause of action. If authority is required for this simple proposition of the law, reference to the case of *Siskina v. Distos Compania Nasiera SA* [1979] AC 210 should be made. There, Lord Diplock succinctly said at p. 256 of the report:

> ... A right to obtain an interlocutory injunction, is not a cause of action. It cannot stand on its own. It is dependent upon there being a pre-existing cause of action against the defendant arising out of an invasion, actual or threatened by him, of a legal or equitable right of the plaintiff for the enforcement of which the defendant is amenable to the jurisdiction of the Court. The right to obtain an interlocutory injunction is merely ancillary and incidental to the pre-existing cause of action. It is granted to preserve the *status quo* pending the ascertainment by the Court of the rights of the parties and the grant to the

plaintiff of the relief to which his cause of action entitles, which may or may not include a final injunction.

For the reasons adumbrated above, I dismissed encl. 4 with costs.

Addendum

It is said that *Russell v. Russell* [1880] 14 Ch D 471 is an authority for the proposition that the court cannot control the exercise of a power to expel if it is exercised in a *bona fide* manner. But a close scrutiny of *Russell v. Russell (supra)* shows that that case was not a case on expulsion but rather on dissolution. It is a correct proposition of the law to say and I so say that all clauses in partnership agreements conferring the powers to expel must be construed strictly. This is purely done in order to prevent abuse and to obviate the hardship of expulsion. The court will be reluctant to expel a partner if it can be shown that the co-partners, although justified to expel under the expulsion clause, have taken advantage of the circumstances for their own purposes. Indeed this was the situation in *Blisset v. Daniel (supra)* where the majority of the partners were given a wide power to expel which did not require a reason to be given for its exercise nor any prior meeting of the partners to be convened. The power to expel was, in fact, exercised against one partner by the name of Blisset with the appropriate notice served on him. During the course of the trial, it transpired that the other partners wanted to get rid of Blisset who had objected to a proposal that the firm should appoint one of the other partners by the name of Vaughan together with Vaughan's son as the co-managers of the business. What was not known to Blisset was this. That Vaughan had delivered an ultimatum to the other partners wherein he threatened to leave the partnership if Blisset remained in the firm. That threat succeeded and the other partners signed the expulsion notice against Blisset. But before the notice was served on Blisset or any intimation of the existence of the notice was made known to Blisset, the other partners induced Blisset to sign certain accounts with the sole purpose of acquiring his share at a favourable price in the event the expulsion took place. In these circumstances, the court declared that the notice that was issued was void and Blisset was then restored as a partner.

At the end of the day, the squabbles between the plaintiffs and the defendants in these two civil suits will not get them anywhere. Prudence and commonsense must prevail. Once Maybank reinstate the panelship, it is hoped that the Firm will consolidate and prosper.